

1333.102 General.

(a) Protests must be received within ten work days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals. Unless the time limit for receiving the protest is extended for good cause, a protest to the contracting activity which is received after the time limit will not be considered. When a timely protest is filed only with the contracting activity, the contracting officer shall take prompt action toward resolution after consulting with the AGC, and notify the protestor in writing of the action taken.

(b) When a protest is filed only with the contracting activity before award, an award shall not be made until the matter is resolved, unless the head of the contracting office makes the determination prescribed in FAR 33.103(f).

(c) When a protest is filed only with the contracting activity after award, the Contracting Officer need not notify the contractor, if the protest can be promptly resolved. If it appears likely that a protest will be filed with the General Accounting Office (GAO), or other administrative forum, the Contracting Officer should promptly notify the contractor in writing and consider suspending contract performance.

[64 FR 16652, Apr. 6, 1999]

1333.103 Protests to the agency.

(a) When a protester decides to file a protest at the agency level with the Protest Decision Authority, the guidelines set forth in these established agency level protest procedures above the Contracting Officer apply. These procedures are in addition to the existing protest procedures contained in the FAR Part 33.102 and 1333.102 of this subpart.

(1) For purposes of this subpart, a day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the pe-

riod begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

(2) Protesters using these procedures may protest to the Protest Decision Authority who will make the final decision for the Department. Protests shall be addressed to: (Name, title of the person and address to be inserted by the Contracting Officer in the solicitation). The outside of the envelope or beginning of the FAX transmission must be marked "Agency-level Protest". The protester shall also provide a copy of the protest within 1 day to the responsible Contracting Officer and a copy to: Contract Law Division, Office of the Assistant General Counsel for Finance and Litigation, Department of Commerce, Room H5882, 14th Street and Constitution Avenue, NW, Washington, DC 20230, (FAX Number 202-482-5858).

(3) While a protest is pending at the agency level with the Protest Decision Authority, the protester agrees not to protest to the GAO or any other external fora. If the protester has already filed with the GAO or other external fora, the procedures described here may not be used.

(i) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 14 days after the basis of the protest is known or should have been known, whichever is earlier.

(ii) To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be

filed on the next day. Incomplete submissions will not be considered filed until all information is provided.

(iii) To be complete, protests must contain the following information:

(A) The protester's name, address, telephone number, and fax number.

(B) The solicitation or contract number, name of contracting office and the Contracting Officer.

(C) A detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced.

(D) Copies of relevant documents supporting protester's statement.

(E) A request for ruling by the agency.

(F) Statement as to form of relief requested.

(G) All information establishing that the protester is an interested party for the purpose of filing a protest.

(H) All information establishing the timeliness of the protest.

(iv) All protests must be signed by an authorized representative of the protestor.

(b) Within 14 days after the protest is filed, the Contracting Officer will prepare an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, that may have been identified by agency officials as being relevant to the fairness of the procurement process. The Contracting Officer shall forward this administrative report to the Contract Law Division, Office of the Assistant General Counsel for Finance and Litigation.

(1) For good cause shown, the Protest Decision Authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the Protest Decision Authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

(2) Unless an extension is granted, the Protest Decision Authority will issue a decision within 35 days of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

(3) The Protest Decision Authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester, by "Certified Mail, Return Receipt Requested," and shall forward information copies to the applicable contracting office and the Procurement Executive, Office of Acquisition Management.

(c) Effect of protest on award and performance.

(1) When a protest is filed prior to award, a contract may not be awarded unless authorized by the Head of the Contracting Activity (HCA) based on a written finding that:

(i) The supplies or services are urgently required.

(ii) Delivery or performance would be unduly delayed by failure to make the award promptly.

(iii) A prompt award will be in the best interest of the Government.

(2) When a protest is filed within 10 days after contract award, or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the Contracting Officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize continued contract performance, notwithstanding the protest, based on a written finding that:

(i) Contract performance would be in the best interest of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

(d) The Protest Decision Authority may grant one or more of the following remedies:

(1) Terminate the contract.

(2) Re-compete the requirement.

(3) Issue a new solicitation.

(4) Refrain from exercising options under the contract.

(5) Award a contract consistent with statutes and regulations.

(6) Amend the solicitation provisions which gave rise to the protest and continue with the procurement.

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(7) Such other remedies as the decision-maker may determine are necessary to correct a defect.

[64 FR 16653, Apr. 6, 1999]

1333.104 Protests to GAO.

(a)(1) *General.* A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation, no later than one day after the protest is filed with the GAO. The envelope containing the complete protest shall be clearly marked "GAO Protest".

(2) The GAO report shall be assembled and organized by the contracting office in accordance with rule 4(d) of the GSBGA Rules of Procedure (48 CFR part 6101) except where rule 4(d) may conflict with GAO procedures.

(b) *Protests before award.* When the contracting activity has received notice of a protest filed directly with GAO, a contract may not be awarded prior to a GAO decision on the protest, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (b)(1) after consulting with the AGC. The head of the contracting office shall notify the AGC when the written finding has been executed so that the AGC can notify GAO. The contracting activity is not authorized to award the affected contract until the AGC has notified GAO of the written finding.

(c) *Protests after award.* When the contracting activity receives notice of a protest filed directly with GAO within 10 calendar days after contract award, the contracting officer shall immediately suspend performance pending a GAO decision on the protest or terminate the awarded contract, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (c)(2) after consulting with the AGC. The head of the contracting office shall notify the AGC when the written finding has been executed so that the AGC can notify GAO. The contracting activity is not authorized to continue contract performance until

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the AGC has notified GAO of the written finding.

[51 FR 15331, Apr. 23, 1986, as amended at 60 FR 47310, Sept. 12, 1995]

1333.105 Protests to GSBGA.

(a)(1) A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation, on the same day the protest is filed with the GSBGA. The envelope containing the complete protest shall be clearly marked "GSBGA Protest".

[51 FR 15331, Apr. 23, 1986, as amended at 60 FR 47310, Sept. 12, 1995]

1333.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1352.233-2, Service of Protest (JAN 1985) (Deviation FAR 52.233-2), in lieu of the provision at FAR 52.233-2 in solicitations for other than small purchases.

Subpart 1333.2—Disputes and Appeals

1333.213 Obligation to continue performance.

(a) The contracting officer may use Alternate I to the clause at FAR 52.233-1, Disputes, only after the Head of the Contracting Activity has determined in writing that—

(1) Continued performance is necessary pending resolution of any claim arising under or relating to the contract because of unusual circumstances which make continued performance essential to the public health or welfare;

(2) Financing is or will be available for the continued performance; and

(3) The Government's interest is or will be properly secured.

Subpart 1333.70—Department Board of Contract Appeals

1333.70-1 Department Board of Contract Appeals.

The General Services Administration (GSA) Board of Contract Appeals